UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE: CITY OF DETROIT, MICHIGAN,	.	Docket No. 13-53846
	.	Detroit, Michigan
	.	April 11, 2014
Debtor.	.	10:00 a.m.
. . . . .		

BENCH OPINION RE. (2806) CORRECTED MOTION TO APPROVE COMPROMISE/MOTION OF DEBTOR FOR ENTRY OF AN ORDER, PURSUANT TO SECTION 105(a) OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 9019, APPROVING A SETTLEMENT AND PLAN SUPPORT AGREEMENT AND GRANTING RELATED RELIEF
BEFORE THE HONORABLE STEVEN W. RHODES
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Debtor:	Jones Day By: CORINNE BALL 222 East 41st Street New York, NY 10017 (212) 326-7844
	Pepper Hamilton, LLP By: ROBERT S. HERTZBERG 4000 Town Center, Suite 1800 Southfield, MI 48075-1505 (248) 359-7333
For Erste Europaische Pfandbrief-und Kommunalkreditbank Aktiengesellschaft in Luxemburg, S.A.:	Ballard Spahr, LLP By: VINCENT J. MARRIOTT, III 1735 Market Street, 51st Floor Philadelphia, PA 19103-7599 (215) 864-8236
For the Official Committee of Retirees:	Dentons US, LLP By: CAROLE NEVILLE 1221 Avenue of the Americas, 25th Floor New York, NY 10020-1089 (312) 632-8390

APPEARANCES (continued):

For Syncora Holdings, Ltd., Syncora Guarantee Inc., and Syncora Capital Assurance, Inc.:	Kirkland & Ellis, LLP By: STEPHEN HACKNEY RYAN BLAINE BENNETT 300 North LaSalle Chicago, IL 60654 (312) 862-3062
For David Sole:	Jerome D. Goldberg, PLLC By: JEROME D. GOLDBERG 2921 East Jefferson, Suite 205 Detroit, MI 48207 (313) 393-6001
For UBS AG:	Bingham McCutchen, LLP By: JARED R. CLARK 399 Park Avenue New York, NY 10022-4689 (212) 705-7770
For Bank of America:	Davis Polk & Wardwell, LLP By: ELLIOT MOSKOWITZ 450 Lexington Avenue New York, NY 10017 (212) 450-4241
Court Recorder:	Letrice Calloway United States Bankruptcy Court 211 West Fort Street 21st Floor Detroit, MI 48226-3211 (313) 234-0068
Transcribed By:	Lois Garrett 1290 West Barnes Road Leslie, MI 49251 (517) 676-5092

Proceedings recorded by electronic sound recording, transcript produced by transcription service.

THE CLERK: All rise. Court is in session. Please be seated. Case Number 13-53846, City of Detroit, Michigan.

THE COURT: Good morning. Appearances, please.

MR. HERTZBERG: Good morning, your Honor. Robert Hertzberg, Pepper Hamilton, on behalf of the City of Detroit.

MS. BALL: Good morning, your Honor. Corinne Ball of Jones Day on behalf of the City of Detroit.

MR. HACKNEY: Your Honor, good morning. Stephen Hackney and Ryan Bennett on behalf of Syncora.

MS. NEVILLE: Good morning, your Honor. Carole Neville from the Retiree Committee.

MR. MARRIOTT: Good morning, your Honor. Vince Marriott, Ballard Spahr, on behalf of EEPK and affiliates.

MR. GOLDBERG: Good morning, your Honor. Jerome Goldberg on behalf of interested party, David Sole.

MR. CLARK: Good morning, your Honor. Jared Clark, Bingham McCutchen, UBS AG.

MR. MOSKOWITZ: Good morning, your Honor. Elliot Moskowitz from the law firm of Davis Polk & Wardwell representing Bank of America.

THE COURT: Before the Court is the city's motion to approve its settlement of the claims asserted by creditors Merrill Lynch and UBS. UBS and Merrill Lynch's predecessor in interest, SBS Financial Products Company, were the parties to swaps contracts that were associated with the city's 2005

and 2006 transactions which involved its issuances of $1.5 billion dollars worth of certificates of participation. These certificates of participation were issued by the city to assist with its unfunded liabilities of its two pension plans at that time.

This is the third settlement that these parties reached. The first was for $230 million. The second was for $165 million. On January 16 of this year, following the evidentiary hearing on the city's request for approval of the second settlement, the Court rejected that settlement finding that under the standards adopted in the Sixth Circuit's decision in Bard, the settlement amount was too high given the strengths and weaknesses of the parties' claims, counterclaims, and defenses. The Court did, however, strongly encourage the parties to continue their negotiations, which they did, eventually reaching the settlement that is now before the Court for approval. This current settlement obligates the city to pay $85 million, which is about a 70-percent discount in its termination fee obligation of about $288 million to the swaps counterparties.

The record before the Court consists of the evidence submitted at the prior hearing and at the hearing held last week in connection with this motion. The Court's detailed findings of fact and conclusions of law from the previous hearing are, to the extent pertinent, adopted for purposes of

resolving this motion, and the Court will not restate those findings and conclusions here. The record reflects no grounds to reconsider any of those findings or conclusions.

The Court will now review in some detail the primary features of the present settlement. The city agrees to grant the swap counterparties an allowed secured claim in the amount of $42.5 million each secured by the city's casino revenue. The total settlement is, therefore, $85 million. During the pendency of the agreement, the city will not commence or prosecute any litigation against the swap counterparties. If either of the service corporations or any other person commences such litigation, the city will cooperate with and support the defense of the litigation by the swap counterparty defendant. The city also will not grant any other liens to be senior or in pari passu with these liens on the casino revenue. Either when the settlement amount is paid -- excuse me. When the settlement amount is paid, the city will automatically release its claims against the swap counterparties. If the service corporations or any other entity are collapsed into the city, any claim that the entity might have against the swap counterparties will also be released. The city will not propose a plan that treats the swap counterparties less favorably than as provided in the settlement agreement.

As a defense against any claim, the city retains the

right to argue the invalidity of any transaction document defined as including the collateral agreement, the swap insurance policies, the 2006 transactions, the city pledges, the service corporation security interest, the service corporation pledge, the authorizing ordinance, the definitive documents, and the settlement transaction as long as the city is not seeking affirmative recovery from the swap counterparties. Upon the payment of $85 million, the liens on the pledged property will be released, and the swap counterparties will withdraw their proofs of claim. So long as the city is not in breach of the settlement agreement, the swap counterparties will not attempt to trap the casino revenue from the city, and if the custodian tries to trap the casino revenue, the swap counterparties will use their best efforts to help fix -- to help the city fix the problem.

Once the settlement is paid, the swap counterparties agree to the same release of claims against the city as the city agrees to release against the swap counterparties. The agreement excludes the release of claims by the swap counterparties against the service corporations to the extent the service corporations are not collapsed into the city. The swap counterparties agree to vote in favor of the city's plan as long as it treats their claims no less favorably than those claims are treated in the agreement. The swap counterparties retain their right to terminate the swap

agreement; however, they will not be able to hold the city liable for any termination fee. The swap counterparties retain all rights, claims, and remedies related to the swap agreements or to the swap insurance parties against any person that is not a party to the settlement agreement, including claims against the service corporations, Syncora, or FGIC, so long as the claim does not result in the swap insurer receiving an allowed secured claim for reimbursement or subrogation against the city. The swap counterparties retain the right to intervene in the COPs litigation. The settlement agreement bars the service corporations from, quote, "commencing any litigation or taking any other action that the service corporations would not have been able to commence or take if the service corporations were a party to the agreement and obligated to the same extent as the city under the agreement," close quote. So the service corporations are barred from making any claims against the swap counterparties relating to any of the underlying transaction documents.

The settlement agreement contains a bar order and judgment reduction provision for claims by third parties. This provision bars all parties from asserting any claim for noncontractual indemnity or contribution against any swap counterparty. However, if a court determines that a barred -- that barred claims exist that would give rise to

liability of any swap counterparty to a barred person but for the barred order -- the bar order, the barred person shall be entitled to judgment reduction provisions set forth in the order.

The city will pay off the $85 million in monthly installments of approximately $4.2 million into the existing lockbox structure. These are the monthly holdback payments. The custodian will release the funds to the swap counterparties quarterly. These are the quarterly payments. The city's payments are payable without interest until October 15th, 2014. After that date, the city's payments will begin to bear interest at the same rate as post-petition financing plus 1.5 percent plus a 1-percent deferral fee. On the effective date of the city's plan, which may or may not be before October 15th, 2014, the city does plan to pay off the balance of the $85 million to the swap counterparties with exit financing. If the city is unable to obtain exit financing, this is a liquidity event. The city will then have 180 days following the effective date of the plan to pay the balance in full. The city agrees to use the first dollars after the post-petition facility is paid off of any net proceeds of any financing or refinancing consummated in the plan that is either supported by the full faith and credit of the city or payable from general funds of the city to pay off the balance.

That is a summary of the settlement agreement that is before the Court. The city contends that this settlement is a reasonable settlement of the claims of UBS and Merrill Lynch given the strengths and weakness of the parties' claims, counterclaims, and defenses, as the Court detailed in its previous ruling. It is, of course, supported also by UBS and Merrill Lynch.

The city contends that the benefits of the settlement include the following. First, the settlement amount is reduced and the payments are extended, and because of that, the city no longer needs post-petition financing to settle its obligations under the swap contracts. Second, the swap counterparties will release their claims against the city and vote in favor of its plan of adjustment. Third, the city will have greater certainty regarding its cash flows and liquidity. Fourth, the city will have continued access to its casino revenues, which is a stable source of significant revenues for city operations. Fifth, it will simplify future financing efforts. Sixth, it facilitates settlements with other creditors by providing an impaired accepting class as required by 11 U.S.C., Section 1129(a)(10). And, seventh, it avoids protracted and expensive litigation that will impair its ability to reorganize efficiently.

The Court concludes that the record fully supports the city's view of these benefits. Accordingly, the Court

finds that these benefits are real and substantial and justify granting the motion.

The Court will now address whether the settlement must, nevertheless, be rejected for one of the other reasons advanced by the objecting parties. These objections generally do not go to the economic reasonableness of the settlement but whether the structure of the settlement is legally permissible. The record reflects several objections to the settlement that have been resolved with additions to the proposed order approving the settlement. However, several creditors maintain objections to the settlement on the following grounds. First, one party, David Sole, contends that the amount of the settlement is still too high in light of the potential recovery that the city could have against UBS and Merrill Lynch on its counterclaims against them. Second, Syncora contends that the settlement cannot be approved as a matter of law because it unlawfully impairs its contract rights. Third, the objectors contend that the settlement cannot be approved because the city's grant of a lien in its gaming revenues to UBS and Merrill Lynch is unlawful under state law. Fourth, the objectors contend that the settlement cannot be approved because it impairs the rights of the two service corporations even though they were not parties to this settlement.

The Court concludes that each of the outstanding

objections to the settlement lack merit, and, accordingly, the motion to approve the settlement should be granted. Specifically, the Court finds that the amount of the settlement is reasonable and quite fairly compromises the parties' various claims, counterclaims, and defenses, all of which were previously reviewed by this Court. While it is true, as Mr. Sole asserts, that there is a possibility that the city could recover substantial amounts from the swap counterparties, perhaps as much as 300 to $400 million, the Court had previously found that the likelihood of that outcome was uncertain. Indeed, the record was and now remains such that the Court cannot find that there is a reasonable likelihood of success on these counterclaims. In any event, the Court further previously found that it was certain that any such litigation would be expensive and, considering appeals, would take years. Nothing in the hearing last week -- in the record of the hearing last week undermines that finding. In these circumstances, therefore, the Court finds that despite that possible favorable outcome for the city, the settlement amount of $85 is entirely reasonable and fairly compromises all of the claims between the parties.

Syncora contends that the settlement impermissibly impairs its rights. It relies on In re. SportsStuff, 430 B.R. 170, Bankruptcy Appellate Panel, Eighth Circuit, 2012.

In that case, the proposed settlement would have improperly imposed an injunction precluding nonsettling parties from enforcing their rights against insurers. However, the Court concludes that nothing in this settlement agreement here enjoins or otherwise prevents Syncora from pursuing any rights that it may have. Further, the bar order provision in this settlement agreement is limited to preventing potential defendants in suits brought by the city from asserting claims for contribution or indemnification against the swap counterparties. Such defendants are not prejudiced, however, because any recovery from the city against them would be reduced accordingly. In In re. Greektown Holdings, LLC, 728 F.3d 567, 579, Sixth Circuit, 2013, the Court specifically approved of this very kind of limited bar order. The Court stated, quote, "when the scope of a bar order is limited to claims for contribution or indemnity, the court can compensate the non-settling defendants for the loss of those claims by reducing any future judgment against them," close quote.

Syncora also contends that Section 6.9.2(2) of the 2006 contract administration agreement gives it the right to control all actions of the swap counterparties. Syncora asserts that the provision in the settlement agreement requiring the swap counterparties to vote in favor of the plan interferes with that right. Section 6.9.2 of the

contract administration agreement provides, quote, "Notwithstanding any other provision hereof, any Insurer not then in default under its Credit Insurance shall, (1) be treated as the Holder of all Outstanding Certificates equal to the principal amount of Certificates insured by it for the purposes of actions permitted to be taken by Certificateholders under this title and for the purpose of giving all other consents, directions and waivers that the Certificateholders may give; and (2) control all action that may be taken by any Specified Hedge Counterparty that is the beneficiary of such Credit Insurance, including for purposes of actions permitted to be taken by such Specified Hedge Counterparty under this Agreement and for the purposes of giving all other directions, consents and waivers that such Hedge Counterparty may give," close quote. The Court concludes that this provision does not give Syncora the right to control the votes of the swap counterparties on the city's plan of adjustment. Further, to the extent that Syncora concludes that the swap counterparties are in violation of the contract administration agreement, nothing in the settlement agreement impairs Syncora's right to assert a breach of contract claim.

Syncora contends that the settlement agreement operates as an impermissible termination or amendment of the 2009 collateral agreement without its consent. The Court

must reject this argument also. First, the settlement agreement does not terminate the collateral agreement either expressly or by implication, and the parties to the settlement agreement do not contend that the collateral agreement is terminated. Further, the requirements for termination in Section 14.4 have not been satisfied. Second, the Court concludes that the settlement agreement also does not operate as an amendment in contravention of Syncora's rights under Section 14.5. The settlement agreement is a compromise of claims, not an amendment to an existing agreement. In In re. Residential Capital, LLC, 497 B.R. 720, 748, Bankruptcy, Southern District of New York, 2003, the Court noted that a settlement agreement is not an amendment to an underlying agreement but a resolution of a claim. Finally, nothing suggests that Syncora is a third-party beneficiary of the collateral agreement or that it has any rights arising from it except as the agreement specifically provides. For these reasons, the Court overrules these objections to the settlement that Syncora asserted.

Both the Official Committee of Retirees and Syncora objected to the proposed settlement agreement on the grounds that the service corporations are not parties to the agreement. The proposed settlement contemplates a release of the lien on casino revenues once the $85 million is paid to the swap counterparties. In the collateral agreement dated

June 15, 2009, the swap counterparties were not granted the lien directly from the city. Rather, they hold the lien by way of a pledge from the city to the service corporations and from the service corporations to the swap counterparties. The objectors assert that as a result, the proposed settlement cannot be approved without the service corporations. Here it must be noted again that Syncora was not a party to the collateral agreement, although it did consent to it. The record reflects that on March 12, 2014, the service corporations were served with the present motion to approve the settlement. See Docket Number 3061. Neither of the service corporations, however, filed an objection to the motion. Therefore, by implication, at least, they acquiesce in the motion.

The Court concludes that this objection should be overruled. The city granted a lien on the casino revenues directly to the service corporations, and the service corporations immediately granted all of their interest in those revenues to the swap counterparties. Pursuant to the express terms of the collateral agreement, the counterparties have an interest in casino revenues and a right to compromise that interest. The collateral agreement is fairly straightforward. Under Section 4.1, the city granted the service corporations a security interest in the revenues to secure the city's payment obligations to the service

corporations. Under Section 4.2, the service corporations then granted the swap counterparties a security interest in their right to payment from the city and in the casino revenue. Under Section 11 of the collateral agreement, the swap counterparties' remedies include the exercise of all rights and remedies otherwise available to the service corporations as secured parties under the city pledge. This ostensibly gives the counterparties the ability to exercise any rights which the service corporations have under the collateral agreement, including the right to enter into a reasonable settlement with the city. The objectors do not contend that this two-step pledge, per se, is legally invalid nor do they explain why, if the service corporations have the legal capacity to discharge the lien pursuant to the rights and powers granted to them by the city's pledge, that same legal capacity to discharge the lien did not pass to the swap counterparties pursuant to the service corporations' pledge. Further, the terms of the contract are consistent with the Michigan Uniform Commercial Code, which recognizes that when a party pledges a right to payment, the collateral securing that right to payment follows. MCL, Section 440.9203(7), provides, quote, "The attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also an attachment of a security interest in the security

interest, mortgage or other lien," close quote. When a right to payment is pledged, therefore, the pledgee has the right to enforce that right to payment upon default, including the enforcement of accompanying liens.

MCLA, Section 440.9607, provides, quote, "(1) If so agreed, and in any event after default, a secured party may do 1 or more of the following: (a) Notify an account debtor or other person obligated on collateral to make payment or otherwise render performance to or for the benefit of the secured party; (c) Enforce the obligations of an account debtor or other person obligated on the collateral and exercise the rights of the debtor with respect to the obligation of the account debtor or other person obligated on collateral to make payment or otherwise render performance to the debtor, and with respect to any property that secures the obligations of the account debtor or any other person obligated on the collateral," close quote. In addition, comment nine to MCLA, Section 440.9607, also notes that the secured party's collection and enforcement rights include the right to settle and compromise claims against the account debtor.

Because the swap counterparties' interest in the casino revenue is co-extensive with the interest of the service corporations that were granted by the city and because the service corporations have not objected to the

settlement, the Court concludes that the failure to include the service corporations in this proposed settlement does not preclude its approval.

The remaining objections relate to what the Court will refer to as the collateral structure for the settlement agreement. The objecting parties, primarily the Retirement Systems, the Retiree Committee, the retiree association parties, and the COPs holders, assert that the settlement agreement cannot be approved because it provides, in effect, for the swap counterparties to be treated as secured parties under the city's plan of adjustment. Indeed, paragraph 10 of the proposed order approving the settlement provides, quote, "Ordered that each of UBS and MLCS are hereby granted an allowed claim (collectively, the 'Secured Claims') against the City secured by liens on the Pledged Property (the 'Liens'), which, solely for purposes of distributions from the City, shall be deemed to be in the aggregate amount -- aggregate principal amount of $42,500,000 for each of UBS and MLCS," close quote.

The objecting parties assert that because this Court found that the city is reasonably likely to succeed on its challenges to the collateral agreement under the Michigan Gaming Control Act, the swap counterparties should be treated as unsecured creditors in the city's plan of adjustment. Some of the objectors also argue that the settlement

agreement cannot be approved because the pledge of the casino revenue under the collateral agreement is illegal and that the Court cannot rule on this motion without first resolving the question of whether the pledge is legal. Stated another way, the objectors argue that by approving the settlement agreement, which allows the pledge of casino revenue to continue until the $85 million settlement amount is fully paid off, the Court is giving its approval to a potentially illegal security interest.

The Court concludes that neither objection has merit. It is beyond serious dispute -- it is beyond serious dispute that when a creditor asserts a secured claim against a debtor and the debtor or other parties dispute the validity of the lien, the parties can agree not to challenge the validity of the disputed lien in exchange for the creditors' agreement to accept a lesser payment on its secured claim. Such an agreement is, of course, subject to the Bankruptcy Court's approval under Rule 9019 standards and the requirements of the Bankruptcy Code. For example, in In re. Hooper, 2012 WL 603766, Ninth Circuit, Bankruptcy Appellate Panel, February 14, 2012, the Ninth Circuit Bankruptcy Appellate Panel affirmed the Bankruptcy Court's approval of a settlement in which a lender accepted a reduced claim against the estate to settle an adversary proceeding in which the trustee alleged that the lender held an invalid deed of

trust.

In Six West Retail Acquisition, Inc. v. Loews Cineplex, 286 B.R. 239, Southern District of New York, 2002, the District Court affirmed the Bankruptcy Court's approval of a settlement in which the unsecured creditors' committee agreed not to seek avoidance of certain liens and mortgages granted to creditors as part of a pre-petition restructuring in exchange for the new investors' agreement to commit $45 million for distribution to unsecured creditors.

Another example is this Court's own decision in In re. Collins & Aikman, Case Number 05-55927, which this Court presided over in 2005 and 2006. There a creditor, Huron Mold & Tools, alleged that it had a first priority statutory lien in the debtor's molds pursuant to the Michigan Mold Lien Act. Huron Mold & Tools asserted a secured claim in the amount of approximately $1.4 million. The debtor disputed the validity of the mold liens. However, rather than litigating the liens, the debtor agreed to allow Huron Mold a secured claim in the amount of $350,000. In exchange, Huron agreed to waive, release, and discharge all of its alleged liens on the debtor's molds.

The compromise submitted for the Court's approval here today in this case is indistinguishable from these examples. The swap counterparties have asserted claims against the city for the present value of the remaining life

of the swap agreement. As the city explained at the hearing, this amount varies depending on prevailing interest rates, but it is estimated in the hundreds of millions of dollars. Alternatively, the swap counterparties could terminate the swap agreement because the city has long been in default. They could then file a claim for this termination fee estimated, as noted, to be in the hundreds of millions of dollars. Either way, the swap counterparties have taken the arguable position that their claims are secured by the casino revenue. The city disputes the validity of the swap counterparties' alleged security interest in the casino revenue, but, much like the debtor in Collins & Aikman, the city seeks to resolve its potential liability under the swap agreement and to relieve itself of the alleged liens on the casino revenue without having to litigate the issues by allowing a substantially reduced secured claim. As the city argues, nothing in law requires the city to litigate the validity of the lien. Rather, the law allows the settlement and compromise of such an issue as long as the settlement is fair and reasonable in the circumstances. Indeed, as this Court previously noted, the law prefers compromise to litigation.

Now, our case here is slightly more complicated than Collins & Aikman because the agreement that gave rise to the disputed lien, the 2009 collateral agreement, is a separate

agreement from the swap agreement, which is the agreement that gave rise to the swap counterparties' actual claim against the city in this bankruptcy case. The objectors have taken the position that the city could secure a release of liens by court -- by a court order declaring the liens invalid rendering the swap counterparties' claims unsecured. However, this position ignores the very real risk of a court finding that the city's obligations to the swap counterparties cannot be impaired due to the safe harbors for swap agreements in the Bankruptcy Code. See In re. Iridium Operating, LLC, 478 F.3d 452, Second Circuit, 2007. In that case, the Court affirmed the Bankruptcy Court's approval of a settlement of disputed liens where avoiding the liens involved an expensive and complex lawsuit which, even if ultimately successful, offered little reward and acknowledging that the liens held out promise for all creditors.

Here the Court pauses to make an important point. The major purpose and the ultimate affect of the settlement agreement is that the disputed liens on the casino revenues will be released. Indeed, assuming an effective date of October 15th, 2014, the settlement agreement is quite likely to be the fastest, surest, and least costly way for the city to achieve that goal. The city places great importance on that goal in achieving its reorganization, and the record

supports that judgment.

For purposes of the collateral structure objections then, the only significant difference between the Collins & Aikman settlement and the one before the Court today is that in Collins & Aikman settlement agreement provided that Huron Mold would receive the $350,000 lump sum payment within three days of the Court's approval of the settlement at which point the secured claim would be deemed fully paid and satisfied. The mold releases -- the mold liens would be released and discharged. Here, of course, the city seeks to pay the swap counterparties over time, but the settlement agreement on the liens and the release of the liens is essentially the same. Once the $85 million settlement amount is paid, the liens will be released.

Thus, the only question remains is whether the delay in the release of the liens until the $85 million is paid means, as the objectors contends, that the Court cannot approve this settlement. Stated another way, the issue is whether the delayed discharge of the disputed liens amounts to an approval by this Court of the disputed liens. The Court finds that the answer to this issue is no for several reasons. First, as confirmed at the April 3rd hearing, the city is not seeking a finding that the disputed liens conform to the requirements of the Michigan Gaming Control and Revenue Act. At the hearing, the swap counterparties agreed

to remove the language from the proposed order approving the settlement which provides that the liens are and shall continue to be valid, binding, perfected, and enforceable. The proposed order does foreclose any challenges to the liens, but the need for any such challenge is obviated by the settlement agreement itself, which provides for the discharge of the liens upon payment of the reduced settlement amount.

Second, the Court accepts and finds reasonable the swap counterparties' need for the lien to ensure that the city fulfills its obligations under the settlement agreement. The city does not have the resources to pay the full settlement amount now. If the city sought a loan to pay the settlement, as it did in the last attempt to settle with the swap counterparties, the collateral structure objections raised here would be clearly baseless because the liens granted in the collateral agreement would be discharged immediately as in Collins & Aikman. And it is likely that the repayment terms of the settlement would provide a better deal than -- for the city than any loan would. In the settlement, the city gets credit for payments already made this year. Also, the interest rate does not -- the interest does not begin to accrue until after plan confirmation, and the city is not required to incumber any new property or to pay commitment fees, which, as we know, can be substantial. The city is not required to incumber any new property or to

pay any such commitment fees. The preservation of the status quo in the settlement agreement until the settlement amount is paid and the disputed liens are released is, thus, a substantial net gain for the city, its residents, and its creditors. Given the facts of the case and the troubling history between the city and the swap counterparties, the Court finds that the settlement structure is reasonable and that the settlement structure warrants the Court's approval of the settlement agreement.

Finally, it has been argued that the plan support provision of the settlement agreement is somehow unfair in that it creates an impaired accepting class as required for confirmation of the city's plan on a cramdown basis under Section -- excuse me -- under 11 U.S.C., Section 1129(a)(10), and that the city can use this to its advantage in negotiating with other creditors. To some extent, this is a plan confirmation issue. Nevertheless, the Court will now comment that there is nothing unusual or unfair about this. It is not inconsistent with either the language or the spirit of the Bankruptcy Code. To the contrary, Chapters 9 and 11 are explicitly designed to promote negotiation, settlement, and compromise, and Section 1129(a)(10) of the Bankruptcy Code does precisely that, and there's no reason to believe that this section should have any different purpose or effect in Chapter 9.

The impact of this is that, subject to the other requirements of Chapters 9 and 11, the city's plan of adjustment may well now be eligible for confirmation on a cramdown basis without any further agreement by creditors. Indeed, this prospect was enhanced earlier this week when the city announced its settlement with certain unlimited tax general obligation bondholders. The message is that now is the time to negotiate, not on the eve of the confirmation hearing in July, nor even in June or in May but now. The Court, once again, urges the city, the retirement parties, and the other creditors in the case to follow the example that the city, UBS, Merrill Lynch, and the UTGO parties have set with their settlements, with the settlement here approved today and that the city and the UTGO bondholders set with their settlement.

The Court specifically commends the parties and their attorneys involved in the swap settlement approved here today. They could easily have been discouraged by this Court's rejection of the last settlement and hardened their positions into full-blown litigation. Instead, they chose to reengage. This was plainly a challenging negotiations -- negotiation, but they persisted, and in doing so, they demonstrated the very spirit of cooperation and compromise that the Court urges upon all of the parties in negotiating the remaining unsettled claims.

The Court feels compelled to make one further comment about the parties' conduct of this case. It is apparent that each of the parties here is waging an orchestrated public relations campaign in an effort to advance their positions. Indeed, we saw evidence of this again just yesterday. The Court calls upon the parties and their attorneys and their leadership to give serious consideration to whether this is really in their best interests or, on the other hand, whether it is actually counterproductive to the ultimate resolution of this case. This bankruptcy case is not about who wins in the court of public opinion. This case is about the application of the Bankruptcy Code to the city's bankruptcy case, and it's about enhancing both the city's future and creditor recoveries by using the most efficient and effective avenue available. In that -- in this case, that avenue is certainly not a public relations campaign, nor is it a litigation campaign for years at great expense. That avenue is a campaign of all-out good faith mediation and negotiation as demonstrated by the parties to the swap settlement and the UTGO settlement.

Motivated by absolutely nothing more than a fervent commitment to public service, Chief Judge Rosen and his team have embraced this Court's call to assist the parties in resolving the complex issues in this case. They have done so with unprecedented dedication, enthusiasm, energy,

creativity, and resourcefulness and all despite the fact that each of them otherwise have full-time jobs. The mediation team remains committed to the mediation process, and the Court urges the parties with unsettled claims to take full advantage of that opportunity and to leave the alternative of litigation with its attendant extraordinary expense and delay to an absolutely last resort.

Finally, to complete the record, to the extent that the Court has not addressed any objections to the settlement that the parties have asserted, the Court concludes that these objections do not warrant discussion, and they are overruled.

The motion to approve the settlement is granted. The city may submit an order. Anything further at this time?

MR. HERTZBERG: No. Thank you, your Honor.

THE COURT: All right. We'll be in recess.

THE CLERK: All rise. Court is adjourned.

(Proceedings concluded at 10:44 a.m.)

INDEX

WITNESSES:

None

EXHIBITS:

None

I certify that the foregoing is a correct transcript from the sound recording of the proceedings in the above-entitled matter.

/s/ Lois Garrett April 12, 2014

Lois Garrett